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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,610	02/27/2004	Roy K. Lim	4002-3438	9038
52196 7590 12/10/2008 KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709				
EXAMINER				
SWIGER III, JAMES L				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
12/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/789,610

**Applicant(s)**

LIM, ROY K.

**Examiner**

JAMES L. SWIGER III

**Art Unit**

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-31 and 42-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-31.59 and 61-67 is/are allowed.
- 6) ☒ Claim(s) 42, 44, 46-50, 55, 58, 60 and 68-70 is/are rejected.
- 7) ☒ Claim(s) 43, 45, 51-54, 56 and 57 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/27/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 42, 44, 46-49, 50, 55, 58 and 60, 68-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Koros et al. (US Patent Number 5,273,519). Koros et al. disclose an apparatus for connecting to an orthopedic implant comprising a base comprising an upper base portion and a lower base portion (see various embodiments of figures 2, 19 and 23) and having a relatively forward end and a relatively rearward a slidable shaft, e.g. 30, connected to the base, wherein the shaft 30 includes an elongated portion, e.g. 172, a pivotable plate, e.g. 20 having an opening, e.g. 21, a sleeve, e.g. 25, 26 and 27, at least partially surrounding the shaft and being slidable along the shaft 30, a ratchet mechanism (see figures 10 and 11) connected to the base and the sleeve 25/26/27, a stop connected to the base comprising at least one paw, e.g. 66 that is pivotable between at least one position connected to the ratchet mechanism and the position disengaged from the ratchet mechanism and a handle, e.g. 10, 11, 50 including an actuator, e.g. 40, movably/pivotably connected to the base, wherein the actuator operates the ratchet mechanism when the actuator is moved relative to the base. The handle further comprises a rigid stock, e.g. 10.

With regard to the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Koros et al., which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

### ***Allowable Subject Matter***

Claims 43, 45, 51-54, 56 and 57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3-31, 59 and 61-65, 66-67 are allowed.

### ***Response to Arguments***

Applicant's arguments, filed 12/20/2007, with respect to claims 42, 44, 50, 55, 58, 60 have been fully considered but were not found persuasive. It is held that the prior art still reads on the claimed invention.

It is further noted that claims 46-49 and 68-70 were incorrectly indicated as being allowable, however these depend from claims that are currently rejected; their allowability is removed in view of the rejections above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES L. SWIGER III whose telephone number is (571)272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L SWIGER/  
Examiner, Art Unit 3775  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733